

BEFORE THE PENNSYLVANIA LABOR RELATIONS BOARD

In the Matter of)	
)	
UNIVERSITY OF PITTSBURGH,)	
)	
Employer,)	Case No. PERA-R-19-2-W
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL)	
AND SERVICE WORKERS INTERNATIONAL UNION)	
AFL-CIO, CLC)	
)	
Petitioner,)	
_____)	

PETITIONER'S EXCEPTIONS TO THE PLRB'S DENIAL OF A UNIT
DETERMINATION HEARING

Respectfully submitted on this 25th day of
April, 2019

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Pursuant to 34 Pa. Code § 95.98, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC, (“Petitioner” or “Union”) takes these exceptions to the findings and rulings of Secretary Nathan Bortner (“Secretary”) of the Pennsylvania Labor Relations Board (“PLRB”) as set forth in his Proposed Order of Dismissal (“POD”) dated April 9, 2019, regarding the petition filed by the Union in the above captioned case. The Union excepts to the following findings and rulings as set forth in the POD:

1. To the proposed ruling by the Secretary that the PLRB not conduct a hearing on the petition.
2. To the proposed finding of the Secretary that the showing of interest that accompanied the petition fell short of thirty percent.
3. To the effective determination of the appropriate unit by the Secretary solely reliant on the list the University of Pittsburgh (“Employer” or “University”) chose to provide to the PLRB without any hearing or opportunity for the Union to review, provide evidence or rebut.

UNION'S SUPPORTING ARGUMENT

The Union's Petition – On January 18, 2019, the Union filed a Petition under the Public

Employe Relations Act for representation of the following bargaining unit:

All full-time & regular part-time tenure-stream and non-tenure-stream faculty, and librarians in the Provost Area, Health Science Schools, & School of Law, employed by the University of Pittsburgh at all campuses in the Commonwealth.

Excluding Faculty in the School of Medicine, research associates, postdoctoral associates, graduate student employees, non-faculty professionals, & all non-professional employees, supervisors, guards, managerial & confidential employees.

Based on substantial reviews with faculty in the petitioned-for bargaining unit and analysis of publicly available information provided by the University in its own Fact Book and to the federal and state Departments of Education of approximately 3080 non-Medical School faculty, the Union indicated a generous approximated bargaining unit size of 3500 employees. The Union had provided a showing of interest for a bargaining unit much larger than this.

On March 1, 2019, an agent of the PLRB conducted a conference call with the representatives of both the Union and the Employer. During this call, it was established that three issues would have to be resolved at a Hearing scheduled for July of 2019. These included the exclusion of faculty in the School of Medicine, determining which faculty and administrators should be excluded from the bargaining unit as supervisory or managerial personnel, and what formula would be used for determining which faculty are defined as regular part-time if the parties could not reach an agreement. The Employer also indicated that the Union's stated bargaining unit size of 3500 was not far off depending on how regular part-time faculty would be defined.

The Employer's List and the Showing of Interest – After the March 1, 2019 conference call, the PLRB requested that the Employer provide a list of bargaining unit members in the petitioned for bargaining unit. The Union was not provided a copy of this list, and more importantly, it was provided no basis for the Employer's determination of who should be on this list. The University was free to pack the bargaining unit with whoever it wanted to include on this list. It appears clear that in determining whether the showing of interest was met, the Secretary of the PLRB accepted this list on its face.

As described above, the Union based the estimated bargaining unit size of 3500 on a substantial analysis of the University's own data, which indicated only 3080 non-Medical School faculty, in comparison with information provided by the faculty. On March 1, 2019, the Employer indicated that 3500 was a good estimate. Based on the showing of interest provided by the Union, the Employer needed to have provided a list that was much larger than 3500 for the 30% threshold not to have been met. As such, the logical conclusion is that the Employer packed the list with the names of individuals who do not properly belong in the petitioned-for bargaining unit. Without an opportunity to review and analyze the list and with no hearing conducted on the matter, this conclusion must be assumed.

The Union's Strong Exception to the Secretary's Unquestioned Reliance on the Employer's List – The Employer's list of employees was supposed to reflect the Union's petitioned-for bargaining unit. This is the list the Secretary relied on for making his determination about the showing of interest. However, it appears that the PLRB Secretary in making an administrative determination as to a sufficient showing of interest, has instead made unit determinations that are to be made after a full hearing. As described above, there were numerous unresolved issues

concerning the size and scope of the bargaining unit. Neither the Union nor the PLRB has any means of determining whether the Employer included any faculty from the School of Medicine on the list; whether it included any supervisory or managerial personnel on the list; whether any postdoctoral associates, non-faculty professionals or staff, graduate student employees, or non-professional staff were included on the list; or how it determined what part-time faculty to include on the list.

Furthermore, under PERA and PLRB case law, it is understood that individuals with casual appointments are not appropriately included in a bargaining unit of full-time and regular part-time employees. See Borough of Whitaker, 14 PPER ¶ 14200 (Final Order, 1983); See also Lansford Borough, 43 PPER ¶ 106 (2012); Temple University Health System, 40 PPER ¶ 3 (Final Order, 2009).

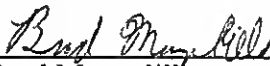
Similarly, it is also understood under PERA and PLRB case law that individuals who are jointly employed by both the University and another employer who does not fall under the jurisdiction of PERA and the PLRB are not appropriately included in a bargaining unit of employees of the University. See Southeastern Transportation Authority, 48 PPER ¶ 59 (2017). The Employer should not have included any such individuals on the list.

Again, without an opportunity to review the list and understand who was included, the Union must rely on the information it has and assume the Employer packed the list with employees who are not in the petitioned-for bargaining unit. In such situations, the PLRB holds a hearing to determine the appropriateness of the list before accepting a proposed POD. See In the Matter of the Employees of the Commonwealth of Pennsylvania 49 PPER ¶ 46 (2017).

CONCLUSION

For the foregoing reasons, the Union requests its Exceptions to the Secretary of the PLRB's findings and ruling be granted and that a Hearing be conducted to determine the appropriateness of the list provided by the Employer to the PLRB for the purposes of determining if the showing of interest has been met. The Union further requests that it be provided a copy of the list. In the alternative, the Union requests a copy of the list and an opportunity to provide a position statement on its appropriateness to determine if a Hearing is warranted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 25th day of April, 2019, I caused the foregoing to be filed by mail and in person to the Pennsylvania Labor Relations Board and to be served by overnight mail and email on the following parties of record:

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